Supreme Court, U.S.
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In The

Supreme Court of the United States

BERNARD H. GLATZER,

Petitioner,

v.

BEAR, STEARNS & CO., INC., et al.,

Respondents.

On Petition For A Writ Of Certiorari To The State Of New York Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *DTD Enterprises, Inc. v. Wells*, 558 U.S. ___, 130 S.Ct. 7, 8 (2009), Justice Kennedy issued a concurring opinion joined by Chief Justice Roberts and Justice Sotomayor that "there is considerable force to the argument that a hearing in which the trial court does not consider the underlying merits of the class-action suit is not consistent with due process because it is not sufficient, or appropriate, to protect the property interest at stake." The questions presented are:

1. Was the trial court's stated *refusal* at its hearing – and the related trial court's refusal to conduct *any* hearing, to consider the underlying merits of petitioner's related claims, consistent with due process when the trial courts' resultant orders of dismissal finally destroyed petitioner's protected property interests.

2. Did the state appellate court's dismissal of petitioner's appeals without adjudicating the trial courts' refusals violate the Supremacy Clause, because the defendant state appellate court refused to comply with the district court's judgment of abstention *specifically* for the state appellate court to adjudicate the trial courts' refusals to conduct hearings appropriate to the nature of this case.

PARTIES TO THE PROCEEDING

Petitioner is Bernard H. Glatzer, plaintiff-appellant in the courts below.

Respondents are Bear, Stearns & Co., Inc., Weisser Johnson & Co. L.P., Weisser Johnson & Co., and Frank Weisser, defendants-respondents in the courts below (the Bear, Stearns action).

Respondents are Michael A. Cardozo – Corporation Counsel of the City of New York, Schindler Cohen & Hochman LLP, Jan C. Sturla – Director – Orange County Department of Child Support Services, The Chase Manhattan Bank, Marian Balay, and Marlene Thomason, defendants-respondents in the courts below (the Cardozo action).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bernard H. Glatzer respectfully prays that a writ of certiorari issue to review the order of the State of New York Court of Appeals.

OPINIONS BELOW

The opinion of the State of New York Court of Appeals is reported at 13 N.Y.3d 790 (Ct.App. 2009). The subsequent opinion of the State of New York Court of Appeals is reported at 13 N.Y.3d 716 (Ct.App. 2010). The opinion of the New York Appellate Division, First Department is unreported (a four word summary of the opinion is published at 2009 NY Slip Op 70935(U)). The opinions of the Supreme Courts of the State of New York are unpublished.

JURISDICTION

The State of New York Court of Appeals entered its order on Sept. 22, 2009. A motion for leave to appeal to the State of New York Court of Appeals was denied on Jan. 14, 2010. Justice Ginsburg granted petitioner an extension of time to file this Petition for a Writ of Certiorari through June 14, 2010. The jurisdiction of the Court is invoked under 28 U.S.C. Sect. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Sect. 1, cl. 3, of the Fourteenth Amendment to the Constitution provides: (N)or shall any state deprive any person of life, liberty, or property without due process of law.

Art. VI, cl. 2 of the Constitution provides: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

This case is about whether the trial court's stated *refusal* at its fifteen minute hearing to consider the underlying merits of petitioner Glatzer's claims against respondent Bear, Stearns is consistent with due process. This case is also about whether the related trial court's refusal to conduct *any* hearing to consider the underlying merits of petitioner Glatzer's claims against respondent Cardozo is consistent with due process.

A. The Bear, Stearns Action In The Trial Court

At its fifteen minute hearing on Bear, Stearns' motion to dismiss Glatzer's complaint, the trial court

refused to consider the underlying merits of Glatzer's claims for:

1. Bear, Stearns' conspiracy with Enron Corp. former Chief Executive Officer Jeffrey K. Skilling to distort Glatzer's stolen business plans -- the critical genesis of Enron's and Skilling's $180 Billion/Yr. natural gas marketing, trading, and derivatives business – by rendering them Enron's and Skilling's first likely criminal off balance sheet partnership without required 3% true outside equity as described in a handwritten Skilling document. This same lack of required 3% true outside equity was replicated in Enron's subsequent off balance sheet partnerships, whose revelation by the Wall Street Journal in the fall of 2001 caused the collapse and bankruptcy of Enron on Dec. 2, 2001. This claim thus was the subject of a front page article in the Wall Street Journal on June 7, 2005, entitled "His Decade of Chasing Skilling" ("Similar, later projects are at the heart of the alleged fraud at Enron"). App. 24;

2. Quantum meruit recovery from Bear, Stearns based upon Skilling's compensation directly resulting from Bear, Stearns' securing Skilling's first job at Enron to implement Glatzer's stolen business plans, for which Bear, Stearns effectively admitted it received monetary payments from Enron which it did not disclose to and about which it lied to a prior federal district court in Glatzer's first action against Bear, Stearns. In its April 9, 2007 Reply in Further Support of Defendants' Motion to Dismiss (at 16), Bear, Stearns pled:

> "Mr. Glatzer asserts that Mr. Skilling's deposition will reveal that Mr. Skilling and Defendants lied about who helped Mr. Skilling obtain employment at Enron. Opp'n at 6.
>
> Whether Defendants helped Mr. Skilling obtain his job at Enron, received payments for getting Mr. Skilling that job or even lied about Mr. Skilling's employment has nothing to do with whether the 1998 Settlement Agreement requires dismissal, whether the statute of limitations has expired or whether the earlier judgments against Mr. Glatzer require dismissal."

Notwithstanding Bear, Stearns' quixotic pleading that it doesn't matter whether Bear, Stearns lied to a federal district judge to obtain a judgment in its favor, Skilling's obtaining his first job at Enron by arranging for Enron to make payments to Bear, Stearns for getting Skilling his first job – and then lying about it – constitutes Skilling's "private gain" he argued to the Court (in No. 08-1394) the government was required to prove under the federal honest services criminal statute;

3. Bear, Stearns' breach of the confidentiality and best efforts provisions of its Aug. 25, 1998 settlement letter with Glatzer of the prior federal action (during its appeal) – wherein Bear, Stearns agreed to use its best efforts to achieve vacatur of the prior district court's summary judgment grant to Bear, Stearns – by Bear, Stearns' transmission of the

confidential settlement letter to Skilling, who utilized the leaked confidential terms to oppose vacatur and to obtain solely collateral estoppel based summary judgment for Enron in a Bronx state court. Bear, Stearns breached its confidentiality and best efforts obligations, to further conceal both its conspiracy with Skilling to create Skilling's and Enron's first likely criminal off balance sheet partnership and its receipt of monetary payments from Enron for getting Skilling his first job at Enron.

Glatzer served and filed with his complaint against Bear, Stearns on Aug. 25, 2004 a motion to denominate a commissioner to take Skilling's dispositive oral deposition on Glatzer's foregoing claims, which Bronx County, State Supreme Court Justice Kenneth L. Thompson granted on default of both Bear, Stearns and Skilling, App. 19. Since Justice Thompson previously had presided over Glatzer's action against Enron in the same Bronx state court, his allowance of Skilling's dispositive oral deposition clearly indicated that Glatzer's foregoing claims were *different* than those upon which he had granted solely collateral estoppel based summary judgment to Enron.

Bear, Stearns then removed this second action on the foregoing claims to federal court, and referred it to United States District Judge Kevin T. Duffy of the Southern District of New York, who previously had presided over Glatzer's first action against Bear, Stearns. On Nov. 22, 2004 Judge Duffy issued an order declining this referred second action as "not

similar" to the claims of Glatzer's first action against Bear, Stearns, which again clearly indicated that Glatzer's foregoing claims were *different* than those upon which he had granted summary judgment to Bear, Stearns.

This second action was reassigned to another district judge, whose order of dismissal was summarily vacated by the United States Court of Appeals for the Second Circuit on Nov. 8, 2006 (only six days after oral argument) for lack of federal subject matter jurisdiction in 201 Fed. Appx. 98 (2nd Cir. 2006). On remand to the Bronx state court, this second action was reassigned (mistakenly) by the New York Office of Court Administration to Justice John A. Barone.

Justice Barone restricted his Oct. 15, 2007 hearing on Bear, Stearns' motion to dismiss to solely Glatzer's secondary claim (one of nine) for Bear, Stearns' fraudulent denial of its breach of settlement, and stated that this claim was barred by Judge Duffy's prior summary judgment grant to Bear, Stearns even though Judge Duffy had held the opposite ("not similar") because Bear, Stearns' breach and denial of its breach occurred after Judge Duffy's order during its appeal (which violated the Supremacy Clause (Art. VI, cl. 2) of the Constitution).

Justice Barone at the hearing gave no reason for his restriction and for his stated refusal to consider the underlying merits of Glatzer's eight claims for Bear, Stearns' conspiracy with Skilling, for quantum meruit recovery pursuant to Skilling's "private gain"

about which Bear, Stearns effectively admitted it had lied to Judge Duffy, and for Bear, Stearns' breach of settlement to Skilling.

On Oct. 25, 2007 ten days later Skilling's dispositive oral deposition was allowed a second time by the Bronx state court's Status Conference Part, in an order issued at its hearing which complied with procedural due process. As the Status Conference Part repeatedly confirmed to Bear, Stearns at its hearing, "we exclusively handle discovery in this part" (under the Bronx state court's rules), "so why is Justice Barone even dealing with discovery."

Bear, Stearns panicked and on Oct. 30, 2007 asked Justice Barone by hand delivered letter for an order of protection precluding Skilling's dispositive oral deposition, which Justice Barone had no power to grant even if a proper motion were filed. Justice Barone also panicked, and two days later dispatched his Court Attorney Jonathan Jacobs to intentionally and successfully delay Glatzer from taking Skilling's deposition ("Justice Barone does not want you to take Skilling's deposition"), despite the Status Conference Part order's boldface vacatur of any statutory stays of disclosure pursuant to pending motions to dismiss under the Bronx state court's standard orders.

On Nov. 8, 2007 only five days later Justice Barone precipitously granted Bear, Stearns' motion to dismiss to achieve indirectly what he could not achieve directly – the granting of Bear, Stearns' letter request for an order of protection precluding Skilling's

dispositive deposition without any hearing contrary to its allowance by the proper Status Conference Part *with* a hearing. This second violation of procedural due process was as important as the first violation at the Oct. 15, 2007 hearing, because Skilling's deposition would have revealed Bear, Stearns' Enron-related possible felonies about which Bear, Stearns had effectively admitted it lied to Judge Duffy, and prevented the destruction of Glatzer's property interest in his foregoing claims.

Justice Barone's precipitous Nov. 8, 2007 order of dismissal was not entered until three months later on Jan. 23, 2008 (App. 14) which reflected Justice Barone's twofold violation of procedural due process. Because of Justice Barone's stated refusal at his Oct. 15, 2007 hearing to consider the underlying merits of Glatzer's claims, the order did not state a single word on Glatzer's foregoing claims for conspiracy, quantum meruit recovery, and breach of settlement; on Bear, Stearns' effective admission that it had lied to Judge Duffy (and that Skilling, similarly, had lied to Justice Thompson) on Skilling's "private gain" to obtain their summary judgment and solely collateral estoppel based summary judgment grants; on Judge Duffy's "not similar" order and Justice Thompson's and the Status Conference Part's orders allowing Skilling's dispositive deposition; and, on the order's violation of the Supremacy Clause by its reliance upon the district court's ("our esteemed former colleague") summarily vacated order of dismissal for lack of jurisdiction.

B. The Cardozo Action In The Trial Court

On Cardozo's motion to dismiss Glatzer's complaint, the trial court refused to conduct *any* hearing to consider the underlying merits of Glatzer's claim under 42 U.S.C. § 1983 for Cardozo's colluding with Enron and Skilling under color of state law to enforce a jurisdictionally void (as held by the New York County Family Court) and constitutionally violative California custody modification order, which effectively terminated Glatzer's fundamental *liberty* interest under the Fourteenth Amendment in the custody, care, and maintenance of his children and in his right to a relationship with his children, based upon zero evidence and without any notice to Glatzer of its 1993 hearing.

The Cardozo action was assigned to Justice Larry S. Schachner of the same Bronx state court, who presides over the "city part" for cases against New York City (lead respondent Michael A. Cardozo, Corporation Counsel of the City of New York). Justice Schachner's city part does not conduct any hearings on a defendant's submitted motion to dismiss a plaintiff's complaint. Since Justice Schachner's city part under his rules conducts hearings only on order to show cause motions, and Cardozo's motion to dismiss was not an order to show cause motion (which would be implausible), Justice Schachner refused to conduct any hearing to consider the underlying merits of Glatzer's § 1983 claim for respondents' violation of Glatzer's parental due process rights.

Lead respondent Michael A. Cardozo enlisted Enron's attorney against Glatzer in the actions before Judge Duffy and Justice Thompson to enforce the California custody modification order, with the approval by the other respondents, Enron, and Skilling. Prior to her obtaining the California custody modification order, Glatzer's former wife had been found in criminal contempt three times by Pennsylvania and Oklahoma state courts, for her refusal to comply with her agreed to shared parental responsibility and joint custody of Glatzer's two children in their June 1986 Florida divorce decree. After each state's criminal contempt finding, she fled the state to avoid transfer of primary physical custody to Glatzer, ultimately to California.

At an April 24, 2001 hearing in a prior action in the Bronx state court's matrimonial part, Enron's and Skilling's attorney against Glatzer claimed a "coincidence" in his concomitant enforcement of the California custody modification order (contrary to his enlistment by respondent Michael A. Cardozo *because* he was Enron's and Skilling's attorney against Glatzer). Glatzer, unusually, communicated the "coincidence" to the Wall Street Journal on May 23, 2001, which communication was the initial trigger of the Journal's investigation of Enron and Skilling whose published revelations of Enron's financial fraud resulted in the collapse and bankruptcy of Enron on Dec. 2, 2001 six months later, and ultimately over 35 federal indictments of former Enron officers, including Skilling. This unintended chain of events was a

perfect example of Justice O'Connor's statement in *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) of "the age old insight that many allegations might be 'strange, but true; for truth is always strange, stranger than fiction.'"

On July 6, 2001 Glatzer moved for leave to file a proposed first amended complaint in the matrimonial part under 42 U.S.C. § 1983 for respondents' colluding with Enron and Skilling to violate Glatzer's parental due process rights. Glatzer's original complaint was for respondents' violation of Glatzer's procedural due process rights – not of Glatzer's parental due process rights – in their seizure of Glatzer's bank account without any notice or hearings. The matrimonial part *denied* Glatzer's motion for leave, whose proposed first amended complaint was essentially the same as Glatzer's complaint in this Cardozo action. Glatzer asserted the same § 1983 claim for violation of his parental due process rights against Enron in the bankruptcy court, whose district appellate court held on Sept. 29, 2008 that the matrimonial part's Oct. 12, 2001 denial of Glatzer's motion for leave deprived Glatzer of "an opportunity to litigate his civil rights conspiracy claim" for violation of parental due process rights. *Glatzer v. Enron Corp., et al.*, 2008 WL 4449429, at *7 (S.D.N.Y. Sept. 29, 2008).

Justice Schachner's resultant order of dismissal entered on March 24, 2008 (App. 5) was based on two grounds, the first that Glatzer "had no claim against Enron" because of Judge Duffy's and Justice Thompson's prior summary judgment grants to Bear,

Stearns and Enron. Because Justice Schachner refused to conduct any hearing, he was unaware that Glatzer's never heard claims against Enron (which caused Enron and Skilling to enforce with respondents the California custody modification order) were identical to Glatzer's different claims against Bear, Stearns for conspiracy to create Enron's and Skilling's first likely criminal off balance sheet partnership, quantum meruit recovery pursuant to Skilling's "private gain," and inducement of Bear, Stearns' breach of settlement.

. Because Justice Schachner refused to conduct any hearing, he was also unaware of Bear, Stearns' effective admission to Justice Barone that it had lied to Judge Duffy (and that Skilling, similarly, had lied to Justice Thompson) on Skilling's "private gain" to obtain their summary judgment grants; of Judge Duffy's Nov. 22, 2004 "not similar" order; and of Justice Thompson's and the Status Conference Part's orders allowing Skilling's dispositive deposition, including on the Cardozo action, which Justice Schachner refused to allow.

The second ground for Justice Schachner's resultant order of dismissal was the collateral estoppel of the prior matrimonial part's final order, which appears to be the basis of Justice Schachner's threatened "severe sanctions" against Glatzer for "any further attempt to relitigate these issues." Because Justice Schachner refused to conduct any hearing, he was unaware and could not be made aware because of his threatened "severe sanctions" of

the district appellate court's Sept. 29, 2008 decision that collateral estoppel does *not* exist (with whose federal ruling on a federal § 1983 claim Justice Schachner was required to comply under the Supremacy Clause). Because this § 1983 claim was not heard in the prior matrimonial part, the order of dismissal's corollary statute of limitations ground is inapplicable, since the Cardozo action was filed on Sept. 14, 2005 within six months after the prior matrimonial part proceeding was over under the New York savings statute (New York CPLR § 205(a)).

Without any hearing, Justice Schachner's resultant order of dismissal refused to rule on the "coincidence" of Enron's attorney's concomitant enforcement of the California custody modification order, and respondents' lies thereupon to the prior matrimonial part under New York Judiciary Law § 487. Even worse, without any hearing Justice Schachner granted the two municipality respondents absolute immunity for their ultra vires lies to the matrimonial part, and prematurely held that their enforcement actions were not taken pursuant to their official policies, practices, and customs (when Justice Schachner's refusal to conduct any hearing itself prevented Glatzer from submitting credible evidence). Without any hearing, Justice Schachner refused to permit Glatzer to depose the dispositive witness Skilling (and former Assistant Corporation Counsel Stefanie Lynn Marvin, who enlisted Enron's attorney to enforce the California custody modification order (likely

in return for an illegal referral fee to a public attorney)).

C. Appellate Proceedings

This case is also about whether the defendant state appellate court's refusal to comply with the district court's fully enforceable federal judgment of abstention *specifically* for the state appellate court to adjudicate Justices Barone's and Schachner's refusals to conduct hearings appropriate to the nature of this case, violated the Supremacy Clause (Art. VI, cl. 2) of the Constitution. The defendant state appellate court refused to comply with the federal judgment by dismissing Glatzer's appeals *without* adjudicating Justices Barone's and Schachner's refusals to conduct appropriate hearings.

1. Glatzer filed in the New York Appellate Division, First Department a lengthy motion for consolidation of the appeals and related relief based upon Justices Barone's and Schachner's common refusals to conduct appropriate hearings, with a concomitant request for an enlargement of time to perfect the appeals. On Nov. 6, 2008 its Presiding Justice Jonathan Lippman denied Glatzer's motion, and "granted" its request for an enlargement of time by contracting the time for appeal perfection by three Terms (from the normal nine) to less than one month later. Glatzer filed another lengthy motion in the first department to reargue the denial of the motion and the appeal time contraction. On Dec. 23, 2008 Justice

Lippman again denied the motion by granting it "only to the extent" of enlarging the time for appeal perfection to Feb. 23, 2009.

Justice Lippman's twice denial of the motion prompted Glatzer to file an action in the district court under 42 U.S.C. § 1983 for permanent injunctive relief against Justices Barone and Schachner because of their refusals to conduct appropriate hearings, whose complaint's prayer for relief asked for a stay of the state appeals before defendant Justice Lippman. The three justices all failed to serve and file answers to the complaint or to otherwise move with respect to the complaint within 20 days after being properly served with the summons and complaint.

On Feb. 20, 2009 (before Glatzer's briefs were due on Feb. 23, 2009), the district court's orders and judgments clerk issued its Clerk's Certificate of Default under Fed.R.Civ.Proc. 55(a), an interlocutory order which established Justice Lippman's injunctive liability to stay the state appeals. Shortly after Feb. 23, 2009 Bear, Stearns and Cardozo moved to dismiss the state appeals, on the grounds that Glatzer's briefs had not yet been filed on Feb. 23, 2009. Pursuant to the federal interlocutory order which established Justice Lippman's injunctive liability to stay the state appeals, Glatzer on March 20, 2009 filed in the first department a motion to stay the state appeals, which simultaneously opposed Bear, Stearns' and Cardozo's motions to dismiss the appeals because Justice Lippman on the *same* exact date of Feb. 23, 2009 requested the district court by letter to abstain in

favor of his first department specifically on Justices Barone's and Schachner's refusals to conduct appropriate hearings. On March 13, 2009 a month later Justice Lippman, indeed, again asked the district court to abstain in favor of his first department in a supplemental letter. Justice Lippman's Feb. 23, 2009 and March 13, 2009 letter requests for abstention were made with his *full cognizance* that Glatzer's briefs had not yet been filed on Feb. 23, 2009, in the absence of which the first department could not adjudicate Justices Barone's and Schachner's refusals to conduct appropriate hearings to consider the underlying merits of Glatzer's claims.

On March 30, 2009 the district court entered its fully enforceable federal judgment of abstention under the Supremacy Clause, which granted Justice Lippman's twice requests that it abstain on Justices Barone's and Schachner's refusals to conduct appropriate hearings. The March 30, 2009 fully enforceable federal judgment, however, indisputedly did not vacate the Clerk's Certificate of Default under Fed.R.Civ.Proc. 55(c) which left in place this interlocutory order establishing Justice Lippman's injunctive liability to stay his first department appeals.

On April 30, 2009 the first department entered its final order granting Bear, Stearns' and Cardozo's motions to dismiss Glatzer's appeals, *without* adjudicating Justices Barone's and Schachner's refusals to conduct appropriate hearings (and without any hearing thereupon of its own), and interwovenly denying under *federal* law ("pending proceedings in the

United States District Court for the Southern District of New York") Glatzer's motion to stay the appeals. App. 3. The first department's April 30, 2009 entered order intentionally and callously refused to comply with the district court's March 30, 2009 fully enforceable federal judgment, which is especially binding upon the first department because its Justice Lippman was a defendant in the federal action.

2. On May 20, 2009 the district court entered its second order of abstention on Justices Barone's and Schachner's refusals to conduct appropriate hearings – a constitutional guarantee – in favor of the State of New York Court of Appeals. On June 5, 2009 Glatzer, accordingly, filed a notice of appeal to the court of appeals as of right pursuant to New York CPLR § 5601(b)(1) Constitutional grounds, which the court of appeals dismissed on Sept. 22, 2009 "upon the ground that no substantial constitutional question is directly involved." App. 1. To exhaust his final remedy in state court, Glatzer on Nov. 5, 2009 filed a motion for leave to appeal to the court of appeals pursuant to New York CPLR § 5602(a)(1)(i), which the court of appeals denied on Jan. 14, 2010. App. 21.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THIS PETITION TO SUMMARILY REVERSE THE TRIAL COURTS' FLAGRANT VIOLATIONS OF PROCEDURAL DUE PROCESS AND THE APPELLATE COURT'S EVEN MORE FLAGRANT VIOLATION OF THE SUPREMACY CLAUSE, OR AS AN ALTERNATIVE, FOR FULL MERITS BRIEFING AND REVIEW

While this Petition does not involve a "split" as do many of the Court's cases, it is based upon violations of procedural due process and of the Supremacy Clause that are *so far in error* that not a single decision anywhere, including by the Court, can be found to support them. Petitioner Glatzer recognizes that this case is not a typical candidate for full review by the Court, but the absence in this Petition of the more usual circuit courts' or state highest courts' "split" does not mean that this Petition should be disregarded. The Court, out of concern for its limited resources and disinclination to consider full merits briefing and review in this case, should summarily reverse the courts below to protect these important constitutional interests and to remedy an extremely severe disservice to the administration of justice.

Supreme Court Rule 16.1 provides that the Court may resolve a petition for certiorari by issuing a "summary disposition on the merits." Sup. Ct. R. 16.1. While not frequent, summary dispositions (invariably

reversals) occur somewhat regularly. Over the past decade summary reversals have accounted for between 5% and 12% of the Court's published dispositions on the merits. The Court thus has been quite willing to use summary reversal as a more efficient alternative to full merits briefing and review in appropriate cases. This case is such an appropriate case, because the courts below flagrantly violated both the Fourteenth Amendment's Due Process Clause and the Supremacy Clause of the Constitution, which resulted in decisions that are indefensible. The court should not reward such extreme violation on matters that are beyond dispute, and, in an appropriate case such as this, resolve the Petition by summary reversal.

A. The Court Should Summarily Reverse The Trial Courts' Flagrant Violations of Procedural Due Process

The Court has long held since *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) that a civil cause of action is "a species of property protected by the Fourteenth Amendment's Due Process Clause . . . the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-429 (1982). In *Logan*, the Court further held that the state may not "finally destroy" this protected property interest "without first giving the putative owner an

opportunity to present his claim of entitlement." *Id.*, at 434.

The Court also has long held that persons forced to settle their claims of right and duty through the judicial process "must be given a meaningful opportunity to be heard" when the State has permitted access to its courts on the type of claim asserted, and that deprivation of a protected property interest by adjudication must be preceded by notice and "opportunity for hearing appropriate to the nature of the case," *Boddie v. Connecticut*, 410 U.S. 371, 377-378 (1971) (citing *Mullane, supra*, 339 U.S., at 313).

In *Logan*, the Court reiterated that because the meaningful opportunity to be heard and the opportunity for hearing appropriate to the nature of the case are a matter of federal law, they are not diminished because the State (Justice Schachner's city part) "may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Logan, supra*, 455 U.S., at 432 (citing *Vitek v. Jones*, 445 U.S. 480, 491 (1980)).

In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541 (1985), the Court emphatically held that the meaningful opportunity to be heard and the opportunity for hearing appropriate to the nature of the case, are conferred "not by legislative grace, but by constitutional guarantee" under the Fourteenth Amendment's Due Process Clause.

It is thus clear that Glatzer's claims against Bear, Stearns constitute a protected property interest

under the Fourteenth Amendment's Due Process Clause. It is even more clear that Glatzer's § 1983 claim against Cardozo constitutes an especially protected property interest. This is because this § 1983 claim is for Cardozo's enforcement with Enron and Skilling of a California custody modification order, which effectively terminated by its disallowance of any visitation and issuance of a permanent restraining order against Glatzer, his fundamental *liberty* interest under the Fourteenth Amendment in the custody, care, and maintenance of his children and in his right to a relationship with his children, based upon zero evidence and without any notice to Glatzer of its 1993 hearing. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

It is also clear that the trial courts' dismissals of Glatzer's complaints "finally destroyed" these protected and especially protected property interests, since it has now been shown that Glatzer "cannot obtain judicial review" of the orders of dismissal (*Logan, supra*, 455 U.S., at 434) even after the district court twice abstained on judicial review in favor of the state appellate courts.

It is also clear that both trial courts finally destroyed these protected and especially protected property interests without affording Glatzer prior to their deprivation by dismissal, a meaningful opportunity to be heard and the opportunity for hearing appropriate to the nature of the case, by both trial courts' *stated* refusals to conduct hearings to "consider the underlying merits of" Glatzer's claims. *DTD*

Enterprises, Inc. v. Wells, 558 U.S. ___, 130 S.Ct. 7, 8 (Oct. 13, 2009) (three Justices' concurring opinion). The fact that Justice Schachner's refusal to conduct any hearing was based upon his city part's rules, does not diminish Glatzer's right to a meaningful opportunity to be heard and to the opportunity for hearing appropriate to the nature of the case, because they are a matter of federal law conferred not by the "grace" of his city part, but by constitutional guarantee under the Fourteenth Amendment's Due Process Clause.

1. It is thus *beyond doubt* that both trial courts were required to afford Glatzer the opportunity for some kind of hearing appropriate to the nature of the case, and it is equally beyond doubt that both trial courts pronounced their refusals to do so. In *Boddie*, *supra*, 401 U.S., at 378, the Court held that "[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." In *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976), the Court also held that procedural due process "calls for such procedural protections as the particular situation demands."

It is clear under *Eldridge* that this case's particular situation demanded that Justice Barone afford Glatzer the opportunity for some kind of hearing on Glatzer's claim for Bear, Stearns' conspiracy with Skilling to create Enron's and Skilling's first likely criminal off balance sheet partnership, which claim necessarily constitutes an important interest under *Boddie* because the Court heard on

March 1, 2010 (in No. 08-1394) Skilling's appeal of his criminal conviction based largely on Skilling's knowledge of Enron's *similar*, subsequent off balance sheet partnerships.

It is also clear under *Eldridge*, that this case's particular situation demanded that Justice Barone afford Glatzer the opportunity for some kind of hearing on Glatzer's claim for quantum meruit recovery pursuant to Skilling's "private gain" about which Bear, Stearns effectively admitted it had lied to Judge Duffy (and that Skilling, similarly, had lied to Justice Thompson), which claim necessarily constitutes an important interest under *Boddie* because the Court on March 1, 2010 also heard the important dispute between the government and Skilling on whether the federal honest services criminal statute requires proof of "private gain."

It is also clear under *Eldridge* that this case's particular situation demanded that Justice Barone afford Glatzer the opportunity for some kind of hearing on Glatzer's claim for Bear, Stearns' breach of settlement to Skilling, which claim necessarily constitutes an important interest under *Boddie* because Bear, Stearns breached the settlement (which Skilling induced) to further conceal the foregoing matters not only from Glatzer, but especially from the government. Had Bear, Stearns not breached the settlement on Sept. 25, 1998 and Glatzer's action against Enron thus been allowed to go forward before Justice Thompson, these foregoing matters would have been revealed three years *before* Enron's implosion into

bankruptcy on Dec. 2, 2001, and Enron's resultant losses to its shareholders, employees, and creditors (over $200 Billion) might have been prevented.

It is also clear under *Eldridge* that this case's particular situation was Justice Barone's overriding interest in preventing Glatzer from taking Skilling's dispositive deposition (his Court Attorney's admission to Glatzer that "Justice Barone does not want you to take Skilling's deposition"), which under *Boddie* is not a legitimate, let alone important, interest because it was based solely upon Justice Barone's fear of the extreme controversy of this case (his third rail) since all Glatzer's claims were about Skilling.

2. It is also clear under *Eldridge* that this case's particular situation demanded that Justice Schachner afford Glatzer the opportunity for a higher form of hearing on Glatzer's § 1983 claim for Cardozo's enforcement with Enron and Skilling of the California custody modification order, which claim necessarily constitutes an important interest under *Boddie* because their enforcement was in direct violation of the Court's decisions repeatedly reaffirming that parents have a fundamental liberty interest under the Fourteenth Amendment in their right to a relationship with their children (it is thus not surprising that this claim's "coincidence" facts initially triggered the Wall Street Journal's investigation of Enron and Skilling). It is also clear that Justice Schachner's refusal to conduct any hearing on this § 1983 claim did not provide Glatzer with the "fundamentally fair procedures" required in this case (*Santosky*,

supra, 455 U.S., at 754), which especially required Justice Schachner to afford Glatzer the opportunity for some kind of hearing because the district appellate court in Glatzer's same § 1983 claim against Enron specifically held that the § 1983 claim had not been previously heard in the prior matrimonial part.

It is also clear under *Eldridge* that this case's particular situation was Justice Schachner's overriding interest in getting rid of this equally controversial case *without* any hearing (because of the high congestion in his city part as stated in his rules), which under *Boddie* is not a legitimate, let alone important, interest because the Court held in an analogous instance about New York's hearings on proceedings to terminate parental rights that "(w)e cannot believe that it would burden the State unduly to require that its factfinders have the same factual certainty . . . as they must have to suspend a driver's license." *Santosky, supra*, 455 U.S., at 768.

3. It is also beyond doubt that the trial courts' resultant orders of dismissal are so stunningly wrong – in their serial violations of the Supremacy Clause, in their refusals to consider the correct facts, in Justice Barone's order's failure to state a single word on Glatzer's claims, and in Justice Schachner's threat of "severe sanctions" if Glatzer makes him aware that he was overruled by the district appellate court – they are indefensible. The trial courts' resultant orders of dismissal simply *buried* Glatzer's claims against Bear, Stearns which represent the beginning of Enron and Skilling, and Glatzer's claims against

Cardozo which represent the beginning of the end of Enron and Skilling, and sought to call it a day in decisions that are both constitutionally wrong and equally harsh in result. While this Petition does seek error correction, it presents the sort of error the Court has on many occasions seen fit to correct. If, for example, the Court grants Skilling a partial or total new trial in No. 08-1394, the government may seek Glatzer's assistance and use Glatzer as a witness. It would be an extraordinary reversal of important interests for Glatzer's claims to be heard within a criminal context, but prevented from being heard within a civil context because of the trial courts' burials. The Court should not reward these burials and, instead, in a highly appropriate case such as this, resolve this Petition by summary reversal.

If the Court declines to summarily reverse the trial courts, the Court, as an alternative, should grant certiorari to allow full merits briefing and review in this case. The Court can view this Petition as the continuation of its three Justices' concurring opinion in *DTD, supra*, 130 S.Ct., at 8, that "there is considerable force to the argument that a hearing in which the trial court does not consider the underlying merits of the class-action suit is not consistent with due process because it is not sufficient, or appropriate, to protect the property interest at stake."

B. The Court Should Summarily Reverse The Appellate Court's Even More Flagrant Violation Of The Supremacy Clause (Art. VI, cl. 2) Of The Constitution

The Court has long held since *Washington v. Washington State*, 443 U.S. 658, 695 (1979) that "[s]tate-law prohibition against compliance with the District Court's decree cannot survive the command of the Supremacy Clause of the United States Constitution." The Court specifically rejected the Washington Supreme Court decision on state officials' ability to act under state law, when their actions under state law were in direct conflict with the district court's decree.

In *New York v. U.S.*, 505 U.S. 144, 179 (1992), the Court (Justice O'Connor) further held that "the Supremacy Clause makes federal law paramount over the contrary positions of state officials" (whether federal law comes from the Constitution, a district court judgment on a constitutional guarantee, a statute, or a regulation). In *New Orleans Public Service, Inc. v. Council of New Orleans*, 491 U.S. 350, 365 (1989), the Court (Justice Scalia) held that "[t]here is no greater federal interest in enforcing the supremacy of federal statutes than in enforcing the supremacy of constitutional guarantees." Even before *Washington*, the Court held in *Testa v. Katt*, 330 U.S. 386, 391-393 (1947) that the Supremacy Clause requires state courts to enforce federal law (wherever it comes from).

Citing *Washington*, the Second Circuit Court of Appeals held in *Badgley v. Santacroce*, 800 F.2d 33, 38 (2nd Cir. 1986) (which specifically binds the New York state courts) that "even if . . . compliance would otherwise violate state law, Supremacy Clause considerations require that the judgment of the federal court be respected. . . . The plaintiffs' suit alleged a denial of their constitutional rights . . . the result was a fully enforceable federal judgment that overrides any conflicting state law or state court order."

The first department's April 30, 2009 entered order cannot survive the command of the Supremacy Clause under *Washington*, because it refused to comply with the district court's fully enforceable federal judgment of abstention *specifically* for the first department to adjudicate the trial courts' refusals to conduct hearings appropriate to the nature of this case (a constitutional guarantee) – by dismissing Glatzer's appeals without adjudicating the trial courts' refusals. The order also cannot survive the command of the Supremacy Clause under *Washington*, because it refused to comply with the district court's judgment which failed to vacate its defendant Justice Lippman's default on the federal complaint's prayer to stay the state appeals – by interwovenly denying under *federal* law Glatzer's motion to stay the state appeals.

The first department's dual refusals to comply with the district court's judgment were because of its contrary position to the district court (even though the first department's Justice Lippman had twice

sought abstention in the district court), which cannot survive the command of the Supremacy Clause under *New York v. U.S., supra*, 505 U.S., at 179, because the Supremacy Clause makes the federal law of the district court's judgment "paramount over the contrary position of" the first department. Under the paramount district court's judgment, the first department *had* to adjudicate the trial courts' refusals to conduct appropriate hearings – a constitutional guarantee upon which the district court specifically abstained (*New Orleans, supra*, 491 U.S., at 365), and *had* to stay the state appeals until its defendant Justice Lippman's default in the federal action was vacated.

1. The court of appeals' Sept. 22, 2009 order dismissing Glatzer's appeal as of right on constitutional grounds "upon the ground that no substantial constitutional question is directly involved" (a decision on the merits in the absence of positive assurance to the contrary), also cannot survive the Command of the Supremacy Clause under *Washington* because it did not comply with the district court's May 20, 2009 entered order of abstention *specifically* for the court of appeals to adjudicate the first department's refusal to adjudicate the trial courts' refusals to conduct hearings appropriate to the nature of this case – a constitutional guarantee. The court of appeals' Sept. 22, 2009 order of dismissal cannot survive the command of the Supremacy Clause under *New York v. U.S., supra*, 505 U.S., at 179, because the Supremacy Clause makes the federal law of the district court's May 20, 2009 order "paramount over

the contrary position" of the court of appeals, pursuant to which a "substantial constitutional question *is* directly involved."

2. It is thus beyond doubt that both appellate courts' failure to comply with the district court's judgment and subsequent order of abstention on a constitutional guarantee are so constitutionally wrong under *Washington*, they are indefensible. Without exception, all federal appeals courts and state highest courts have entered decisions in compliance with *Washington* under the Supremacy Clause, even sometimes reluctantly, including *Williams v. Lesiak*, 822 F.2d 1223, 1227 (1st Cir. 1987) (Circuit Judge Breyer); *Brinn v. Tidewater Transp. Comm.*, 242 F.2d 227, 233-234 (4th Cir. 2001); *Kendrick v. Bland*, 740 F.2d 432, 437 (6th Cir. 1984); *In Re Kansas City Star Co.*, 73 F.3d 191, 195 (8th Cir. 1996); and, *Puget Sound Gillnetters Asso. v. Moos*, 92 Wn.2d 939, 955-956, 603 P.2d 819 (Wash.Sup.Ct. 1979) (itself a successor to *Washington*).

While this Petition does seek error correction, it presents the sort of error the Court has on many occasions seen fit to correct. The Court should not reward the state appellate courts' serial violations of the Supremacy Clause and, instead, in a highly appropriate case such as this, resolve this Petition by summary reversal. If the Court declines to summarily reverse the appellate courts, the Court, as an alternative, should grant certiorari to allow full merits briefing and review in this case. The Court can view this Petition as the continuation of its three Justices'

concurring opinion in *DTD, supra*, 130 S.Ct., at 8 (wherein the court denied certiorari because the petition was interlocutory, unlike this petition where the appellate courts' decisions themselves were constitutionally violative), that "(i)t seems advisable, however, to note that the petition for certiorari does implicate issues of constitutional significance."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BERNARD H. GLATZER
Petitioner, Pro Se
Tx. Bar No. 08019500
(Inactive)
2707 Creston Ave., #2F
Bronx, New York 10468
(718) 584-3998

Dated: June 14, 2010

State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-second day of September, 2009

Present, HON. CARMEN BEAUCHAMP CIPARICK, *Senior Associate Judge,* ***presiding.***

SSD 51

Bernard H. Glatzer,
Appellant,

v.

Bear, Stearns & Co., Inc., et al.,
Respondents.

Bernard H. Glatzer,
Appellant,

v.

Michael A. Cardozo &c., et al.,
Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua*

sponte, upon the ground that no substantial constitutional question is directly involved. Chief Judge Lippman took no part.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 30, 2009.

Present: Hon. David B. Saxe, Justice Presiding,
David Friedman
John W. Sweeney, Jr.
Rolando T. Acosta, Justices.

Bernard H. Glatzer,

Plaintiff-Appellant,

-against-

Bear, Stearns & Co., Inc., Weisser Johnson & Co., L.P., Weisser Johnson & Co., and Frank Weisser,

Defendants-Respondents.

Index No. 21663/04

Bernard H. Glatzer,

Plaintiff-Appellant,

-against-

Michael A. Cardozo – Corporation Counsel of the City of New York, Schindler Cohen & Hochman LLP, Jan C. Sturla – Director – Orange County Department of Child Support Services, The Chase Manhattan Bank, Marian Balay and Marlene Thomason,

Defendants-Respondents.

Index No. 21401/05

M-1176
M-1202
M-1245
M-1293
M-1393

Appeals having been taken to this Court from orders of the Supreme Court, Bronx County, entered on or about January 23, 2008 and March 21, 2008, respectively,

And the respective defendants-respondents having moved and cross-moved to dismiss plaintiff's appeals (M-1176/M-1202/M-1243/M-1293),

And plaintiff having moved for a stay of further proceedings with respect to the appeals, pending proceedings in the United States District Court for the Southern District of New York 09 Civ.00650(VM) (M-1393),

Now, upon reading and filing the papers with respect to the motions and cross motions, and due deliberation having been had thereon,

It is ordered that the respective defendants' motions and cross motions are granted and plaintiff's appeals are dismissed. Plaintiff's motion to stay proceedings is denied.

ENTER: /s/ John W. McConnell
Clerk.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA3

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BERNARD H. GLATZER,

Plaintiff,

-against-

MICHAEL A. CARDOZO – CORPORATION COUNSEL OF THE CITY OF NEW YORK, SCHINDLER COHEN & HOCHMAN LLP, JAN C. STURLA DIRECTOR – ORANGE COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, THE CHASE MANHATTAN BANK, MARIAN BALAY and MARLENE THOMASON,

Defendants.

----------x

Index No. 21401/05

Present:
Hon. Larry S. Schachner
Acting Justice
Supreme Court

(Filed On Mar. 24, 2008)

Defendants' motions to dismiss the complaint are consolidated and decided as follows:

This action was initially filed in Bronx Supreme Court, on September 14, 2005 under Index number 21401/05. It was removed to the United States District Court for the Southern District of New York. On or about September 26, 2007, the action was remanded back to the Bronx Supreme Court.

The complaint is thirty-two (32) pages long, and has four (4) causes of action: (1) Continuing Conspiracy: 42 U.S.C. § 1983; (2) Continuing Conspiracy: New York State Constitution, Art. I, § 6; (3) Continuing Conspiracy; and (4) Continuing Deceipt and Collusion – (N.Y.) Judiciary Law § 487.

The essence of Plaintiff's Complaint is that, he developed a "novel idea" on the securitization of oil and gas; that he shared this information with Bear Stearns Co. ("Bear Stearns"), that Bear Stearns shared plaintiff's "novel idea" with Enron Corp. ("Enron") and Enron improperly utilized his so call "novel idea" and profited from it. Plaintiff contends that defendants conspired under – color of state law to prevent him from pursuing his remedies against Enron by colluding with Enron to violate plaintiff's, parental and corollary procedural due process rights.

Parties

The role played by each defendant, according to the allegations of the Complaint, are as follows:

Defendant Thomason is an attorney in California who was appointed by the State of California to act as a Temporary Judge in connection with a marital dispute between plaintiff and defendant Balay. Thomason conducted a hearing in California on July 12, 1993, with respect to claims of Balay for past child support and custody issues. Thomason issued an Order, which was filed on August 10, 1993.

Defendant Balay is the ex-wife of plaintiff and the mother of the two children of their marriage. As indicated, she instituted the proceeding before Thomason, and even though the Thomason Order was filed in California in August 1993 the Order with not registered in New York until December 20, 2000.

Defendant Chase is a bank at which plaintiff had a bank account; The Franchise Tax Board of the State of California issued an Order to Jan C. Sturla – Director Orange County Department of Child Support Services on January 24, 2000 to seize the funds in said account in satisfaction of back child support owed by plaintiff pursuant to the Thomason Order. On March 22, 2001 GLATZER instituted an action in Supreme Court, Bronx County Index No. 14063/01 challenging the seizure of his funds. Named as defendants in that action are Marian B. Glatzer ("Balay") Orange County, Thomason and Jan C. Sturla – the Director of the Orange County Department of Child Support Services.

As to Defendant City of New York, it is alleged that a former Corporation Counsel somehow arranged for Schindler Cohen and Hochman LLP (SCH) to appear on behalf of Orange County. Plaintiff claims that the City is liable based upon respondeat superior. He claims that several Assistant Corporation Counsel engaged in a conspiracy with Enron Corporation and a law firm representing Enron. (SCH)

Defendant SCH initially appeared on behalf of Orange County in the Bronx action, and had previously

represented Enron in another action instituted by plaintiff against Enron.

Defendant Orange County's Department of Child Support Services acted as liaison with the Bronx County Family Court and The City's attorney in connection with the seizure of plaintiff's funds from Chase, and subsequently appointed SCH as its counsel in the Bronx action.

Litigation History

Glatzer v. Bear Stearn 95 CIV 1154 (KTD)

This action was originally filed sometime in 1993 in a Texas State Court and was removed to the Federal District Court in Texas. Thereafter, it was transferred to United States District Court, Southern District, New York in 1995. In that action, District Judge Kevin T. Duffy held in an order dated June 10, 1998 that plaintiff's idea for the securitization of gas and oil was not novel, and that plaintiff had no claim for its alleged unauthorized use by Bear Stearns. The Court granted summary judgment and dismissed the action.

Plaintiff filed an appeal with the United States, Court of Appeals Second Circuit, but prior to the disposition of the appeal plaintiff settled his claims with Bear Stearns and the appeal was withdrawn. However, Judge Duffy' s summary judgment order was never vacated.

Action No. 2
GLATZER V. ENRON,
BRONX County Supreme Court, Index No. 16485/96

Action No. 2 was filed in the Bronx Supreme Court, and carries a 1996 Index number. That action was filed while plaintiff's claim against Bear Stearns (Action No. 1, the first action against Bear Stearns) was pending before Judge Duffy. By an Order and Decision of Justice Kenneth L. Thompson of the Bronx County Supreme Court dated July 9, 1999, Enron was granted summary judgment, based upon the issue-preclusive effect of Order of Judge Duffy in Action No. 1, plaintiff's first case against Bear Stearns. Justice Thompson's Decision and Order held that Judge Duffy's Order collaterally estopped plaintiff from pursuing his claims against Enron.

Plaintiff appealed the Decision and Order of Justice Thompson to the Appellate Division, First Department. The Appellate Division, in an Order dated November 28, 2000, affirmed Justice Thompson's Decision and Order.

Action No. 3
GLATZER V. MARIAN B. GLATZER
"BALAY") ORANGE COUNTY,
THOMASON and CHASE,
Bronx County Supreme Court Index No. 14063/01

Action No. 3 was filed by plaintiff in Supreme Court, Bronx County on March 22, 2001 under Index No. 14063/01. The Complaint in that action dealt

primarily with the July 19, 1993 hearing in California before Thomason, her Order of August 10, 1993, and the seizure of plaintiff's funds from Chase.

The Complaint in Action No. 3 alleged as a First Cause of Action a violation of 42 USC § 1983. Plaintiff alleged the enforcement and ratification of the Thomason Order under color of State Law caused him to be subjected to the deprivation of his due process rights.

Paragraph Eighty-three (83) of plaintiff's Complaint in Action No. 3 stated as follows:

> 83. Mrs. Glatzer's obtaining, Thomason's issuance, and Mrs. Glatzer's, the Family Support Division's and Chase's enforcement and ratification in New York of the intentionally and maliciously fraudulent Order No. 931F14106, under color of State law have subjected Glatzer and caused Glatzer to be subjected to the deprivation of his due process rights under the Fourteenth Amendment to the Constitution of the United States and laws and violation of 42 USC Sect. 1983.

The Second Cause of Action alleged by plaintiff in Action No. 3 claimed that the same facts constituted a violation of Article 1, Section 6 of the Constitution of the State of New York.

Defendants Chase and Orange County moved for summary judgment dismissing Action No. 3, and Justice La Tia Martin issued a Decision and Order on

March 29, 2004 granting that relief and dismissing the action. In doing so Justice Martin stated as follows:

> The Court does not find that FSD or any of the defendants herein were involved in a conspiracy to deprive the plaintiff of his due process or civil rights. In light of the foregoing, the Court finds no triable issues of fact in this matter. Accordingly, FSD's application for summary judgment is hereby granted.

Based upon the voluminous record before the court, all of the motions to dismiss the complaint are granted and the complaint is dismissed in its entirety as follows:

With regard to the motion by defendant City of New York, the doctrine of respondeat superior is not applicable to § 1983 cases absent evidence that the alleged misconduct of subordinates was undertaken pursuant to municipal policy or practice directly causing the alleged constitutional violation. There is simply no credible evidence that the actions of the City attorneys were done pursuant to municipal policy or practice. In any event, the claims against the City of New York and Mr. Cardozo are barred by the Statute of Limitations, as there is no legal basis to toll the statute. In addition, the city attorneys are entitled to absolute immunity in prosecuting plaintiff's child support litigation. Accordingly, the city's motion to dismiss is granted.

As to the motion by defendant Chase Manhattan Bank, its application to dismiss is granted. Chase acted upon a valid California Order which was upheld by Justice Martin. In addition, there is no tort of conspiracy in New York State. The claims against Chase are also barred by the Statue of Limitations and doctrine of collateral estoppel.

Accordingly, Chase's motion to dismiss is granted.

The motion by Schindler Cohen and Hochman LLP (SCH) to dismiss is also granted. The plaintiff's claims against SCH are barred by the Statute of Limitations, as they occurred more than three years prior to September 13, 2005 and no legal basis to toll the statute have been established. Any claim of conspiracy against SCH is barred by the doctrine of collateral estoppel, as Justice Martin in 2004 determined on the merits that no conspiracy existed to violate plaintiff's rights.

With regard to the motion by defendants Orange County and Jan C. Sturla, its motion to dismiss is granted based upon the expiration of the Statute of Limitations. As stated above plaintiff has not demonstrated a legal basis to toll the statute. In addition, the case against these defendants should be dismissed based upon absolute immunity.

Finally, the cross motion by Marian Balay to dismiss is granted based upon the doctrine of collateral estoppel.

Plaintiff's request to conduct discovery and replead is denied. Justice Martin's decision on the merits found that there was no conspiracy and the orders of Judge Duffy and Justice Thompson (affirmed by the Appellate Division) make it very clear the plaintiff has no claim against Enron for misappropriation of his so called "novel idea". By the time the events plaintiff complains of in this case transpired he already knew two courts had ruled that he had no claim against Enron. Thus, any claim of conspiracy to violate plaintiff's right to prosecute a claim against Enron has no legal basis.

The application for injunctive relief is denied. However, plaintiff is cautioned that any further attempt to relitigate these issues may result in severe sanctions.

Accordingly, this case is dismissed.

This constitutes the decision and order of the Court.

Dated: 3-18-08 /s/ LS

Larry S. Schachner
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA-12

- x

Bernard H. Glatzer,

Plaintiff(s),

-against-

Bear, Sterns & Co., Inc., Weisser Johnson & Co., LP and Frank Weisser,

Defendant(s).

INDEX NO. 21663/04

(Filed On Jan. 23, 2008)

- x

HON. JOHN A. BARONE:

This is another case with a long and involved judicial history. The underlying dispute has been the subject of litigation in both state and federal court. In its current posture it is a motion to dismiss the complaint herein, as amended. The motion is made pursuant to CPLR 3211 but turns on factual issues as well and could also be viewed as a motion for summary judgment under CPLR 3212. There is no reason to draw a sharp distinction here since the actions are readily convertible one to the other.

Procedural History

The predecessor litigation in this case was commenced by plaintiff on May 11, 1993 in the 281st Judicial District Court of Harris County Texas. The case was then removed to the US District Court for the Southern District of Texas and venue was

thereafter transferred to the US District Court for the Southern District of New York. It was dismissed on procedural grounds against defendant Frank Weisser. Summary judgment was granted in favor of defendant Bear Sterns on June 10, 1998.

In 1996 plaintiff alleging similar facts commenced an action in New York State Supreme Court, County of the Bronx. After 'the dismissal of his Federal Action in 1998, plaintiff retained new counsel and settled the Federal Action wherein defendants agreed to settle and dismiss the Federal Action and plaintiffs agreed to withdraw his appeal. Then plaintiff continued his action in state court. Defendant petitioned for the removal of the state action to Federal Court Southern District of New York. This petition was initially granted by our esteemed former colleague from the New York City Criminal Court, George Daniels. Judge Daniels once again ruled against plaintiff. Plaintiff appealed the ruling and the US Court of Appeals for the 2nd Circuit ruled that the action should be continued in State Court. Justice Thompson, of this Court, ruled that based on the initial 1998 action in the Federal Court for the Southern District of New York, plaintiff was collaterally estopped from relitigating the same issues in this Court since, the stipulation to the contrary notwithstanding, there was no court order dismissing the federal action and the 1998 ruling of the Federal Court was therefore the law of the case.

Plaintiff has amended his complaint and now sues under the stipulation of settlement alleging *inter alia* fraud in the inducement.

Facts of the Case

Plaintiff, Mr. Glatzer, is an attorney and businessman who proposed a method of financing for oil and gas exploration to Mr. Frank Weisser of Bear Stearns' energy department. The plan involved the creation of an "energy finance company" and the use of its lending subsidiary to book "loan like instruments" funded off the balance sheet of the corporation thereby not creating a liability on the balance sheet of the corporation. The lending subsidiary would obtain its capital through an off balance sheet special purpose vehicle which would employ the novel technique of securitization to create a salable debt security. What this means exactly and whether or not it is a legitimate financing tool or mere accounting *legerdemain* is, fortunately, not an issue for this Court to determine.

Plaintiff alleged that after expressing lack of interest Mr. Weisser then disclosed plaintiff's plans to associates at Bear Stearns who in turn shared it with the now notorious Enron Corporation. Judge Duffy of the Federal District Court who apparently deals with these types of abstruse financing schemes on a more regular basis (he is welcome to them) concluded that the proposal may have been a good idea. He held, however, that Glatzer had not shown that the idea was truly novel. He further concluded

that under New York Law (citing *Downey v. General Foods*, 256 NE 2d 257) in order to establish a property right in an idea it was not enough to show that a concept was clever or useful, rather, the idea must be original. This is where he opined that Glatzer had failed to make a sufficient showing. Justice Thompson concluded that despite the stipulation of settlement between the parties, Judge Duffy's ruling was dispositive as to the disputed facts. This is clearly the law of the case.

Now plaintiff wishes to return to the 1998 stipulation of settlement in this case. He wishes to assert that it was fraudulently induced. It is difficult to see how he could prevail in this claim. A Federal District Court has already ruled against him. The ruling was not appealed. His then counsel, nevertheless, obtained a stipulation of settlement, presumably, by agreeing to forgo an appeal. This arrangement hardly smacks of fraud. Even if the Court were to agree with plaintiff what would be gained? Judge Duffy's ruling would still be controlling. Plaintiff would have no basis on which to sue.

Now it is true that the United States Court of Appeals for the 2nd Circuit has ruled that the removal of this state action to the Federal Court was improper. Nevertheless Judge Duffy's ruling in the earlier case still remains good law. While the District Court may have had no jurisdiction in this branch of the action, the State Court, it seems to me, must still follow, to repeat myself, the law of the case. As set forth above, Judge Duffy has concluded that the

plaintiff has not set forth a claim on which relief can be granted.

Plaintiff has requested that the motion to dismiss be denied and that he be allowed to depose the unfortunate Jeffrey Skilling, the incarcerated former officer of Enron Corporation. To this Court this would appear to be an exercise in futility. In the first place Mr. Skilling has already been deposed extensively in this case. Granted plaintiff contends that Mr. Skilling perjured himself at his deposition. Secondly, even if this is so what would be gained by taking a follow up deposition? To reiterate Judge Duffy has already ruled that plaintiff has no case. If there were no underlying case plaintiff can hardly be said to have been fraudulently induced into terminating it.

This Court is not unsympathetic to plaintiff. Every lawyer has experienced the elation attendant to finding an ingenious solution to a vexing problem. Plaintiff believes his brainchild was taken from him. However, a Judge has ruled that his idea was not sufficiently original or novel to merit protection under New York Law, and that seems to be that.

Defendants motion to dismiss is granted.

This constitutes the decision and order of this Court.

Date: 11/8/07 /s/ John A. Barone
John A. Barone, JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20

BERNARD H. GLATZER,

Plaintiff,

-against-

BEAR, STEARNS & CO., INC., WEISSER JOHNSON & CO. L.P., WEISSER JOHNSON & CO. and FRANK WEISSER

Defendant.

Index No. 21663/04

DECISION/ORDER

Present:
HON. KENNETH L. THOMPSON

The following papers numbered 1 to ___ read on this motion, _____

No On Calendar of	PAPERS NUMBERED
Notice of Motion-Order to Show Cause – Exhibits and Affidavits Annexed	1-2
Answering Affidavit and Exhibits	
Replying Affidavit and Exhibits	
Affidavit	
Pleadings Exhibit	
Stipulation – Referee's Report – Minutes	
Filed papers	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR §§ 3108 and 3113(a)(2) for an order denominating Neil McCallum & Associates, Inc., 5300 Memorial Drive, Suite 600, Houston Texas 77007, a commissioner to take the deposition of Jeffrey K. Skilling, the former Chief Executive Officer of Enron Corporation, in Houston Texas is granted on default.

The foregoing shall constitute the decision and order of this Court.

Dated: DEC 28 2004 /s/ Kenneth L. Thompson
J.S.C.

State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fourteenth day of January, 2010

Present, HON. CARMEN BEAUCHAMP CIPARICK, *Senior Associate Judge,* ***presiding.***

Mo. No. 2009-1231

Bernard H. Glatzer,

Appellant,

v.

Bear, Stearns & Co., Inc., et al.,

Respondents.

Bernard H. Glatzer,

Appellant,

v.

Michael A. Cardozo &c., et al.,

Respondents.

A motion for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Chief Judge Lippman took no part.

/s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

TUESDAY, JUNE 7, 2005 **C1**

MONEY & INVESTING

THE WALL STREET JOURNAL

His Decade of Chasing Skilling

Bernard Glatzer, From the Bronx, Dogs Enron Ex-CEO for Deposition; His Lawsuit Helps Raise Questions

By John R. Emshwiller

Years before federal prosecutors and class-action lawyers began dogging Jeffrey Skilling, Bernard Glatzer was chasing the former Enron Corp. chief executive. He still is.

Now, Mr. Glatzer wants to question Mr. Skilling under oath before Mr. Skilling's criminal trial, scheduled for January, begins in a federal court in Houston.

It isn't a simple task. A New York state-court judge authorized the deposition as part of Mr. Glatzer's latest lawsuit, filed in pursuit of a claim that Enron stole a valuable energy-financing idea from him some 15 years ago. Earlier this year, Mr. Glatzer moved to have a summons served on Mr. Skilling – along with a required $10 witness fee paid to him – at his gated Houston mansion. The deposition was blocked, at least temporarily, when

Mr. Glatzer's lawsuit was transferred to federal court in New York, where a judge is now weighing its fate.

The 57-year-old Mr. Glatzer – who lives in the Bronx borough of New York City and is living off his investments – has known more frustration than success in his decade-long legal odyssey. He has seen two previous lawsuits dismissed and reached one settlement that he now claims was breached. He has gone through a string of lawyers, including the firm headed by well-known litigator David Boies. An attorney by training who is looking into new energy-related ventures when he's not litigating, Mr. Glatzer is currently representing himself.

At the same time, his efforts have helped raise questions about activities in Enron's early days. Similar, later projects are at the heart of the alleged fraud at Enron. Once a relatively lonely voice in claiming wrongdoing at Enron, Mr. Glatzer has been joined by a chorus that includes the Justice Department and Enron shareholders. Last year, prosecutors filed a broad conspiracy and fraud indictment against Mr. Skilling and other former top Enron executives. All the defendants have pleaded not guilty.

Though Mr. Glatzer claims that Mr. Skilling was at the center of the alleged scheme against him, Mr. Glatzer has never named the Enron executive as a defendant in his lawsuits.

Instead, he has sued Enron and investment bank Bear Stearns Cos., which allegedly took part in the purported theft. His current suit, claiming some $500

million in damages, is filed against Bear Stearns, though he is also pursuing a claim against Enron in that company's federal bankruptcy proceeding.

Enron, Bear Stearns and Mr. Skilling have denied any wrongdoing in connection with Mr. Glatzer. Bear Stearns is seeking to have Mr. Glatzer's latest suit dismissed.

Mr. Glatzer says that when he filed his original litigation in the 1990s, he didn't sue Mr. Skilling because Enron and Bear Stearns offered deeper pockets to pursue. These days, Mr. Glatzer adds, Mr. Skilling has so many Enron-related criminal and civil woes that "he isn't going to have any money left" to go after.

Still, he views the former Enron chief as the key to his case. "Skilling is the only one who knows everything," says Mr. Glatzer.

While working in the energy business in Houston in the 1980s, Mr. Glatzer says he came up with an innovative energy-financing plan that bundled interests in natural-gas production into securities to be sold to institutional investors. He turned to Bear Stearns for help in selling the planned securities. He claims a Bear Stearns official illegally slipped his confidential plan to Mr. Skilling, who had been working as a consultant to Enron before joining the company in 1990. In his latest lawsuit, Mr. Glatzer contends Mr. Skilling used the idea to launch a financing operation that helped Enron secure gas

supplies that it could sell, helping it build a hugely successful energy-trading operation.

One part of Enron's operation was financing vehicles known as the "Cactus" entities. Some of Mr. Glatzer's litigation-related research has raised questions about whether Enron improperly accounted for these entities and hundreds of millions of dollars of related debt. Similar financial entities that Enron later created were part of a giant accounting fraud at the company, according to government filings in various Enron-related criminal cases. The Cactus entities haven't been mentioned in any of those cases. Andrew Weissmann, head of the Justice Department's Enron Task Force, declined to comment.

Mr. Glatzer's litigation efforts also produced at least two documents that became more interesting following Enron's late 2001 collapse: transcripts of 1997 depositions that one of his attorneys took of Mr. Skilling and Enron's former chief financial officer, Andrew Fastow. In his deposition, Mr. Skilling said he came up with his gas-financing ideas completely independent of Mr. Glatzer, though he acknowledged having discussed that subject with Bear Stearns. Mr. Skilling added that documents chronicling his early work in this area had either been lost or destroyed.

Though Mr. Skilling's deposition didn't support Mr. Glatzer's claims, the Enron executive did throw in a bit of musical entertainment. During a break, according to the deposition transcript, Mr. Skilling

briefly sang along with the strains of a band playing in a nearby park, crooning "need some hot love baby."

It remains to be seen whether Mr. Skilling would provide any significant news in a second deposition. Daniel Petrocelli, Mr. Skilling's lead criminal-defense attorney, says that if Mr. Glatzer gets permission to depose his client, the defense would seek to put off any such questioning until after next year's criminal trial. Mr. Petrocelli adds that while Mr. Skilling has nothing to hide in the Glatzer matter, the lawyer doesn't want his client distracted by civil litigation from preparations for the criminal case.

Bear Stearns attorneys are asking U.S. District Judge George Daniels to dismiss the case, partly on grounds that a 1998 settlement the company reached with Mr. Glatzer precludes him from suing again. Mr. Glatzer contends that the Wall Street firm violated that agreement by leaking its confidential terms to Enron – an allegation that Bear Stearns denies. A Bear Stearns spokeswoman said Mr. Glatzer's suit is "absolutely without merit." Judge Daniels could issue a ruling soon.